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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/691,132

10/22/2003

Jon Opsal

TWI-11220

6597

28584

7590

10/05/2004

STALLMAN & POLLOCK LLP
SUITE 2200
353 SACRAMENTO STREET
SAN FRANCISCO, CA 94111

EXAMINER

PUNNOOSE, ROY M

ART UNIT

PAPER NUMBER

2877

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/691,132

Applicant(s)

OPSAI ET AL.

Examiner

Roy M. Punnoose

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/14/04
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/22/2003
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed August 09, 2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed.

It has been placed in the application file, but the information listed under "Foreign Patent Documents" and "Other Documents" of the submitted PTO-1449 has not been considered because they were missing and were not available to the Examiner for consideration.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,671,047 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

- A. All claimed elements and limitations of claim 1 of the instant application are disclosed in claims 1 and 2 of U.S. Patent No. 6,671,047 B2.

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- B. All claimed elements and limitations of claim 2 of the instant application are disclosed in claim 3 of U.S. Patent No. 6,671,047 B2.
 - C. All claimed elements and limitations of claim 3 of the instant application are disclosed in claim 4 of U.S. Patent No. 6,671,047 B2.
 - D. All claimed elements and limitations of claim 4 of the instant application are disclosed in claim 5 of U.S. Patent No. 6,671,047 B2.
 - E. All claimed elements and limitations of claim 5 of the instant application are disclosed in claim 6 of U.S. Patent No. 6,671,047 B2.
 - F. All claimed elements and limitations of claim 6 of the instant application are disclosed in claim 7 of U.S. Patent No. 6,671,047 B2.
 - G. All claimed elements and limitations of claim 7 of the instant application are disclosed in claim 8 of U.S. Patent No. 6,671,047 B2.
4. With regard to claims 1 and 3 of the instant application, the limitation that “polychromatic beam having both visible and ultraviolet wavelengths” is not explicitly disclosed in U.S. Patent No. 6,671,047 B2. However, it should be noted that the term “polychromatic” as claimed in U.S. Patent No. 6,671,047 B2 includes both visible and ultraviolet wavelengths because “polychromatic” by definition means more than one wavelength and therefore is inclusive of both visible and ultraviolet wavelengths.
5. Claim 8 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6,671,047 B2 in view of Stanke et al (U.S. Patent 6,690,473).
6. Claim 8 is rejected because:

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- A. The claims of U.S. Patent No. 6,671,047 discloses all claim limitations except for the explicit disclosure that light source includes one or more lamps selected from the group consisting of xenon and deuterium in a method to evaluate characteristics of a semiconductor wafer using various measurement techniques.
- B. Stanke et al (Stanke hereinafter) discloses the use of xenon and deuterium in a method to evaluate characteristics of a semiconductor wafer (see abstract; col.9, lines 13-22).
- C. In view of Stanke's teachings, it would have been obvious to one of ordinary skills in the art at the time the invention was made to incorporate light sources including one or more lamps selected from the group consisting of xenon and deuterium in a method to evaluate characteristics of a semiconductor wafer for improving the accuracy of measurement of various characteristics of the semiconductor wafer.

Allowable Subject Matter

- 7. Claims 1-8 are allowable if the double patenting rejection can be overcome with a timely filed terminal disclaimer as stated in paragraph 2 above.
- 8. Claims 1 and 3 are allowable because the prior art of record, taken alone or in combination, fails to disclose or render obvious a method and apparatus for evaluating the characteristics of a semiconductor wafer by evaluating implantation characteristics based on a first signal that is representative of modulated optical reflectivity induced by periodic excitation of a region on the surface of said wafer, and, second signal that is representative of the change in polarization state of a probe beam, in combination with the rest of the limitations of claims 1 and 3.

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9. Claims 2, and 4-8 are allowable because they are dependent on independent claims 1, or 3 respectively.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Roy M. Punnoose** whose telephone number is **571-272-2427**.

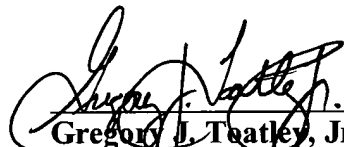
The examiner can normally be reached on 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Gregory J. Toatley, Jr.** can be reached on **571-272-2800 ext.77**. The fax phone number for the organization where this application or proceeding is assigned is **703-872-9306**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Roy M. Punnoose
Patent Examiner
Art Unit 2877
September 30, 2004




Gregory J. Toatley, Jr. *SE 2877*
Supervisory Patent Examiner